

Andrew T. Hahn (AH-6283)  
Jay W. Cho (JC-9580)  
SEYFARTH SHAW LLP  
620 Eighth Avenue  
New York, New York 10018-1405  
(212) 218-5500

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ MAY 04 2010 ★  
BROOKLYN OFFICE

**ORIGINAL**

Attorneys for Defendant  
Lincoln Benefit Life Company

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
MARK KRAFT, Trustee of The Marilyn Mandel  
Irrev. Trust DTD 6/12/05,

Plaintiff,

v.

LINCOLN BENEFIT LIFE COMPANY,

Defendant.  
----- X

**CV 10-2018**

**DEFENDANT'S RULE 7.1  
STATEMENT**

**GLEESON, J.**

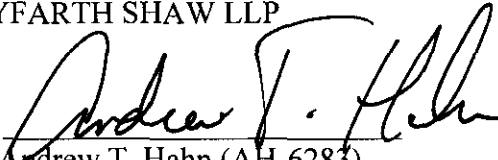
**LEVY, M.J.**

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel for defendant Lincoln Benefit Life Company hereby states that Lincoln Benefit Life Company is a wholly-owned subsidiary of Allstate Life Insurance Company, which is an Illinois insurance company. Allstate Life Insurance Company is a wholly-owned subsidiary of Allstate Insurance Company, which is an Illinois insurance company. Allstate Insurance Company is a wholly-owned subsidiary of the Allstate Corporation, a Delaware Corporation. The stock of the Allstate Corporation is publicly traded. No publicly-held entity owns 10% or more of the stock of the Allstate Corporation.

Dated: New York, New York  
May 4, 2010

SEYFARTH SHAW LLP

By:

  
Andrew T. Hahn (AH-6283)

Jay W. Cho (JC-9580)

620 Eighth Avenue

New York, New York 10018

(212) 218-5500

Attorneys for Defendant Lincoln Benefit Life Company

**ORIGINAL**

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UNITED STATES DISTRICT COURT  
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MARK KRAFT, Trustee of The Marilyn Mandel  
Irrev. Trust DTD 6/12/05,

Plaintiff,

v.

LINCOLN BENEFIT LIFE COMPANY,

Defendant.  
----- X

**CV 10- 2018**

**NOTICE OF REMOVAL**

**GLEESON, J. J.**

**LEVY, M.J.**

Defendant Lincoln Benefit Life Company ("Defendant"), by and through its attorneys, Seyfarth Shaw LLP, and pursuant to 28 U.S.C. §§ 1331 and 1441, files this Notice of Removal with respect to the case identified as Mark Kraft, Trustee of The Marilyn Mandel Irrev. Trust DTD 6/12/05 v. Lincoln Benefit Life Company, Index No.: 1563/2010, from the Supreme Court of the State of New York, County of Queens. In support of this Notice, Defendant states as follows:

**Timeliness of Removal**

1. Upon information and belief, on or about January 20, 2010, plaintiff Mark Kraft, Trustee of The Marilyn Mandel Irrev. Trust DTD 6/12/05 ("Plaintiff") filed a Complaint with the

Clerk of the Supreme Court of the State of New York, County of Queens. (A true and correct copy of the Summons and Complaint is annexed hereto as Exhibit A).

2. On or about April 5, 2010, Plaintiff served a copy of the Summons and Complaint on Defendant via the New York State Department of Insurance (the "DOI"). (A true and correct copy of the notice of service from the DOI is annexed hereto as Exhibit B).

3. This Notice of Removal is timely removed pursuant to 28 U.S.C. § 1446(b), having been filed within thirty (30) days after Defendant's initial receipt of the Complaint, which is the "pleading . . . from which it may first be ascertained that the case is one which is . . . removable."

**Basis for Removal**

4. The ground for removal is diversity of citizenship under 28 U.S.C. § 1332, in that:

- (a) Plaintiff trustee is a citizen of the State of New York (Complaint ¶1);
- (b) The subject trust is a New Jersey trust domiciled in New Jersey (Complaint ¶2); and
- (c) Defendant is a corporation organized and existing under the laws of the State of Nebraska (Complaint ¶3).

5. Additionally, as alleged in the Complaint, the amount in controversy herein is in excess of \$75,000.00, exclusive of interest and costs. That is because in the Complaint, Plaintiff seeks a declaration: (i) that the subject life insurance policy insuring the life of Marilyn Mandel, with the face amount of \$5,000,000 (the "Life Insurance Policy"), is in full force and effect; (ii) requiring Defendant to restore the Life Insurance Policy; and (iii) costs and attorneys' fees (Complaint, Wherefore Clause, at pg. 3), based upon Plaintiff's assertion that "Defendant failed to send the grace period notice in accordance with the terms of the Life Insurance Policy" (*Id.* ¶

16). Plaintiff further alleges that “Defendant improperly took premium payments by automatic charge from plaintiff’s account on November 21, 2007 and December 21, 2007.” (Id. ¶ 9).

6. Because there is complete diversity of citizenship, and because the amount in controversy exceeds \$75,000.00, this Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1441(b).

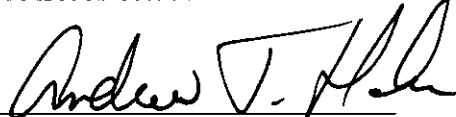
7. Defendant will file a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Queens, to effect removal of this action to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant prays that the above-referenced civil action proceed in the United States District Court for the Eastern District of New York as an action properly removed thereto.

Dated: New York, New York  
May 4, 2010

Respectfully submitted,

SEYFARTH SHAW LLP

By: 

Andrew T. Hahn (AH-6283)  
Jay W. Cho (JC-9580)  
620 Eighth Avenue  
New York, New York 10018  
(212) 218-5500

Attorneys for Defendant Lincoln Benefit Life  
Company

TO: Cheryl D. Lipsius, Esq.  
SCHINDEL, FARMAN, LIPSIOUS, GARDNER & RABINOVICH LLP  
14 Penn Plaza, Suite 500  
New York, New York 10122  
(212) 563-1710

Attorneys for Plaintiff



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

QUEENS COUNTY CLERK  
RECEIVED

2010 JAN 20 PM 3: 20

Date Filed: January \_\_\_\_\_, 2010

MARK KRAFT, Trustee of The Marilyn Mandel  
Irrev. Trust DTD 6/12/05,

Plaintiff,

vs.

4-5-10 LINCOLN BENEFIT LIFE COMPANY,

Defendants.

Index No. 1563 /2010

Plaintiff designates Queens  
County as the place of trial

The Basis of Venue is  
Plaintiff's Residence

**SUMMONS**

Plaintiff resides at  
83-28 Talbot Street  
Kew Gardens, NY 11415  
County of Queens

**TO THE ABOVE NAMED DEFENDANT:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons; exclusive of the date of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
January 20, 2010

SCHINDEL, FARMAN, LIPSIOUS,  
GARDNER & RABINOVICH LLP  
Attorneys for Plaintiff

By: 

Ira S. Lipsius, Esq.  
Cheryl D. Lipsius, Esq.  
14 Penn Plaza, Suite 500  
New York, New York 10122  
212-563-1710  
File No. 4359.0001

Defendant's address:  
Lincoln Benefit Life Company  
2940 S. 84<sup>th</sup> Street  
Lincoln, NE 68506

912 APR 12 '10 AM 9:58



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

MARK KRAFT, Trustee of the Marilyn Mandel  
Irrev Trust DTD 6/12/05

Plaintiff,

vs.

LINCOLN BENEFIT LIFE COMPANY  
Defendant.

Index No.:

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

Plaintiff, Mark Kraft, as Trustee of the Marilyn Mandel Irrev Trust DTD 6/12/05, by his attorneys, Schindel Farman, Lipsius, Gardner & Rabinovich LLP, for his complaint for declaratory relief, states:

**ALLEGATIONS**

1. Mark Kraft is a citizen and resident of the State of New York, County of Queens and is a Trustee of The Marilyn Mandel Irrev Trust DTD 6/12/05 (The "Trust")
2. The Marilyn Mandel Irrev Trust DTD 6/12/05 is a New Jersey trust domiciled in New Jersey.
3. Upon information and belief, Lincoln Benefit Life Company ("Lincoln Benefit") is incorporated in Nebraska.
4. On or about November 21, 2005, defendant issued Policy Certificate Number 01N1269625 to The Trust insuring the life of Marilyn Mandel (hereinafter the "Life Insurance Policy").
5. The Life Insurance Policy was delivered in the State of New Jersey.
6. The Trust is the owner of the Life Insurance Policy.
7. The grace period notice was not timely sent by defendant

FILED 05/04/10 AM 9:50

8. Grace period notice was not received until after the Life Insurance Policy was terminated.

9. Defendant improperly took premium payments by automatic charge from plaintiff's account on November 21, 2007 and December 21, 2007.

10. Plaintiff made premium payments after the Life Insurance Policy had lapsed.

11. Defendant did not return premium payments paid by plaintiff.

12. Plaintiff relied on Lincoln Benefit's written and oral affirmation including an in-force illustration that the Life Insurance Policy was paid and was current and that the Life Insurance Policy was in good standing beyond January 21, 2008, the date the Life Insurance Policy was terminated.

13. On January 21, 2008 Lincoln Benefit sent a letter to The Trust declaring that "The grace period for premium payment on your policy has expired."

14. Defendant has asserted that plaintiff did not pay premiums and as a result the Life Insurance Policy was cancelled.

15. Defendant has refused to rescind the lapse.

#### **CAUSE OF ACTION**

16. Defendant failed to send Grace Period Notice in accordance with the terms of the Life Insurance Policy.

17. Defendant failed to send Grace Period Notice in accordance with the law.

18. Plaintiff paid premiums on the Life Insurance Policy that defendant was obligated to return in accordance with the terms of the Grace Period Notice, the Life Insurance Policy, and under case law and applicable statute.

19. Defendant did not return the referenced premium paid by plaintiff.

20. Plaintiff relied on defendant's representations that the Life Insurance Policy was current and paid to date.

21. Defendant has refused to restore the Life Insurance Policy.

22. Defendant is estopped from cancelling the Life Insurance Policy.

23. Defendant has waived its right to cancel the Life Insurance Policy.

24. Under case law or applicable statute, defendant's attempt to cancel the Life Insurance Policy is unlawful.

25. By reason of the foregoing, plaintiff is entitled to a declaration that the Life Insurance Policy is in full force and effect, and to a declaration requiring defendant to restore the policy.

26. No claim has been made under the Life Insurance Policy, as the insured person, Marilyn Mandel, is alive.

**WHEREFORE**, Plaintiff demands judgment of this Court against defendant, declaring the policy is in full force and effect, the policy must be restored and awarding plaintiff's costs of suit, attorneys' fees, and such other relief as the Court may deem proper and just.

Dated: New York, New York  
January 20, 2010

SCHINDEL, FARMAN, LIPSIOUS,  
GARDNER & RABINOVICH LLP  
Attorney for Plaintiffs

By: 

Ira S. Lipsius

Cheryl D. Lipsius

14 Penn Plaza, Suite 500

New York, New York 10122

212-563-1710

File No.: 4194.0001

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

- ☐ Certification By Attorney certify that the within has been compared by me with the original and found to be a true and complete copy.
- ☐ Attorney's Affirmation state that I am the attorney(s) of record for
- action; I have read the foregoing and know the contents thereof;
- the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

in the within

and know the contents thereof;

The grounds of my belief as to all matter not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

SS.:

I, being duly sworn, depose and say: I am

Check Applicable Box

- ☐ Individual Verification in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.
- ☐ Corporate Verification the of corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

20

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

SS.:

(If more than one box is checked - indicate after names type of service used.)

I,

being sworn, say: I am not a party to the action, am over 18 years

of age and reside at

On 20 I served the within

Check Applicable Box

- ☐ Service By Mail by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:
- ☐ Personal Service on Individual by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:
- ☐ Service By Electronic Means by transmitting the papers by electronic means to the telephone number listed below, with number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received. I also deposited a true copy of the papers, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the attorney at the address set forth after the name:
- ☐ Overnight Delivery Service by depositing a true copy thereof, enclosed in a wrapper addressed as shown below, into the custody of for overnight delivery, prior to the latest time designated by that service for overnight delivery.

Sworn to before me on

20

The name signed must be printed beneath

Index No. 1563/10 Year 20  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

MARK KRAFT, Trustee of the Marilyn Mandel Irrev Trust DTD 6/12/05

Plaintiff,

-against-

LINCOLN BENEFIT LIFE COMPANY,

Defendant.

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SUMMONS AND COMPLAINT

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SCHINDEL, FARMAN, LIPSIOUS, GARDNER & RABINOVICH LLP

Attorneys for Plaintiff

Office and Post Office Address, Telephone

14 PENN PLAZA, SUITE 500  
NEW YORK, NEW YORK 10122  
(212) 563-1710

---

To

Attorney(s) for

---

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

---

Sir:—Please take notice

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named court on

20

☐ NOTICE OF SETTLEMENT

that an order  
settlement to the HON.  
of the within named court, at  
on

20

at

M.

of which the within is a true copy will be presented for  
one of the judges

Dated,

Yours, etc.

SCHINDEL, FARMAN, LIPSIOUS,  
GARDNER & RABINOVICH LLP

Attorneys for

To

Attorney(s) for

Office and Post Office Address, Telephone

14 PENN PLAZA, SUITE 500  
NEW YORK, NEW YORK 10122





SU2 APR 12 '10 AM 9:58

INSURANCE DEPARTMENT  
STATE OF NEW YORK  
One Commerce Plaza  
Albany, NY 12257

STATE OF NEW YORK  
Supreme Court, County of QUEENS

1563/2010

Mark Kraft, Trustee of The Marilyn Mandel Irrev. Trust DTD  
6/12/05

Plaintiff(s)

against

Defendant(s)

Lincoln Benefit Life Insurance

RE :Lincoln Benefit Life Insurance

Attorney for Plaintiff(s) and Defendant(s) please take notice as follows :

Attorney for Plaintiff(s) is hereby advised of acknowledgement of service upon this Department Summons and Complaint in the above entitled action on April 05, 2010 at New York, New York. The \$ 40.00 fee is also acknowledged.

Pursuant to Section 1213 of the Insurance Law, said process is being forwarded to at its last known principal place of business. is not authorized to do business in this State and you are advised that, while such service is accepted and being forwarded to the company, it is your duty to determine whether this is a proper service under Section 1213 of the Insurance Law.

Original to Attorney for Plaintiff(s):

Schindel, Farman, Lipsius, Gardner & Rabinovich LLP  
14 Penn Plaza  
Suite 500  
New York, New York 10122

Persuant to the requirement of section 1213 of the Insurance Law, Defendant(s) is hereby notified of service as effected above. A copy of the paper is enclosed.

Duplicate to Defendant:

Lincoln Benefit Life Insurance  
2940 South 84th Street  
Lincoln, Nebraska 68506

Handwritten signature of Clark J. Williams in cursive.

Clark J. Williams  
Special Deputy Superintendent

Dated Albany, New York, April 07, 2010  
469375